

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Wednesday, 28th October, 2015

*The House met at the Senate Chamber,
Parliament Buildings, at 2.30 p.m.*

[The Speaker (Hon. Ethuro) in the Chair]

STATEMENTS

The Speaker (Hon. Ethuro): Hon. Senators, we have Statements that we deferred from yesterday's sitting. Let us start with the Statement listed as 1(d) on the status of the new NHIF rates.

Sen. Kittony, if you may proceed.

THE STATUS OF THE NEW NHIF RATES

Sen. Kittony: Mr. Speaker, Sir, the Member who requested this Statement is not in the House.

The Speaker (Hon. Ethuro): Order, Senator! We are on the statement listed as 1(d). The Senator who sought the Statement is Sen. George Khaniri. The last time I checked, which was this morning, he was and still is the same one this afternoon.

Sen. Kittony: Mr. Speaker, Sir, you called out Statement 1(b). If it is Statement 1(d), it has already been referred to the Committee on Labour and Social Welfare. It is no longer in our hands. I have already advised Sen. Khaniri to that effect. I hope I am in order.

The Speaker (Hon. Ethuro): Sen. Khaniri, let me hear from you.

Sen. Khaniri: Mr. Speaker, Sir, I know you did not hear her sentiments because you were consulting. She says that my Statement has been referred to the Committee on Labour and Social Welfare. My understanding on matters to do with healthcare is that they are squarely under the Committee on Health. We will need your ruling here. When I put this Statement I thought the Committee on Health would be best suited to respond to this issue. However, she says they have sent it to the Committee on Labour and Social Welfare.

This Statement has been pending for the last four months---

The Speaker (Hon. Ethuro): Order, Senators! This is a Statement by a Senator to the Chairperson of the Standing Committee on Health. Under which circumstances was it referred to another committee?

Sen. Kittony: Mr. Speaker, Sir, I was advised to that effect by the Committee Clerk, that the Statement has been referred to the Committee on Labour and Social Welfare.

The Speaker (Hon. Ethuro): Referred by who?

Sen. Kittony: By the Clerk, Mr. Speaker, Sir. I cannot give a Statement which I do not have.

The Speaker (Hon. Ethuro): Order, Senator. Yesterday you promised to present this Statement before this House today. I challenged you. I said: "If you do not have a Statement, how do you promise to deliver it the following day?" You said by today, you would deliver it. That was only yesterday afternoon. Exactly 24 hours ago.

Sen. Kittony: Mr. Speaker, Sir, I agree with that. However, I am giving you the latest information that I got. Either we take it---

The Speaker (Hon. Ethuro): Of course, I cannot take it or leave it. My job is to dispose it off, somehow.

Sen. Kittony: Well, Mr. Speaker, Sir---

The Speaker (Hon. Ethuro): Order, Senator! You do not argue with the Chair. Resume your seat. Let me find out the circumstances under which that wrong advice was given to you and then I will come back to the matter.

Let us move to Statement listed as 1(e) on the death of Mr. Alex Madaga. This Statement is still for you, Sen. Kittony as it concerns health matters.

Hon. Senators, please, follow the Order Paper. These Statements are listed there.

DEATH OF MR. ALEX MADAGA FOLLOWING
A ROAD ACCIDENT

Sen. Kittony: Mr. Speaker, Sir, they have not been able to get the Cabinet Secretary. So, the situation is similar to that of yesterday. The statement is ready, but the Cabinet Secretary has not appended his signature.

Sen. Adan: On a point of order, Mr. Speaker, Sir. I sought the Statement listed as 1(c) and we agreed that it would be issued today. I believe that Sen. Kittony should be able to issue it now.

The Speaker (Hon. Ethuro): Order! Sen. Billow, I see you are on a point of order.

Sen. Billow: Mr. Speaker, Sir, a couple of weeks ago, there was a ruling in this House by the Speaker that the Cabinet Secretary can mandate his Principal Secretary to sign on his behalf. Such a signed document was accepted here by the Speaker in one of the sessions.

Sen. Khaniri: Mr. Speaker, Sir, I rise to express my disappointment on this particular matter. The entire country agrees with me that this is a grave matter; a matter involving the life of a Kenyan.

I do not think this Committee is giving this matter the seriousness that it deserves. In your ruling, you ordered that this Statement be issued last week. The Cabinet Secretary, Health, had said that they only needed one week to investigate the matter. It is now two weeks. We buried the young man on Saturday in a very emotional ceremony in Vihiga. Those of you who followed the news must have seen this. The family wants to get answers to these pertinent questions that I raised. Can this Chairperson give this matter the seriousness that it deserves?

Sen. Kittony: Mr. Speaker, Sir, I sympathise with the situation, but the Cabinet Secretary has not appended his signature to the Statement. That is the position that we are in.

The Speaker (Hon. Ethuro): Deputy Majority Leader, what is your comment? Sen. Kittony, do you have the unsigned Statement?

Sen. Keter: Mr. Speaker, Sir, I can assist if we know where the unsigned Statement is. We can trace the Cabinet Secretary wherever he is. It seems to me that the Chairperson knows where the Statement is. The only problem is that it has not been signed.

Sen. Kittony: (*Spoke of record*). Therefore, the Statement has not reached our office, but they have told us it is ready. However, the signature has not been appended.

The Speaker (Hon. Ethuro): Order, Senator! This is a grave matter. As the Vice Chairperson of the Committee, your sympathy should be demonstrated in action, not just in words. I, therefore, order the Deputy Majority Leader to produce that Statement tomorrow afternoon. Sen. Keter, you will look for the Cabinet Secretary wherever he is.

Sen. Keter: I will do so, Mr. Speaker, Sir. I will try to get it, even if it is an unsigned Statement. Since the Statement has been done, the only problem is the signature. We can get that Statement as it is and then present it to the House.

The Speaker (Hon. Ethuro): Order, Sen. Keter! Unsigned Statements are not acceptable. The only purpose of referring to you is that you use your power and office, unless you are demonstrating to us you are less powerful than the Vice Chairperson of the Legal and Human Rights Committee who demonstrated the other day that he had the proper connections.

Sen. Keter: Thank you, Mr. Speaker, Sir. I will endeavour to get the Statement as directed.

(Statement deferred)

The Speaker (Hon. Ethuro): Order, Members! We were dealing with the Statements we had deferred yesterday in terms of urgency. We can now go back to the beginning.

We are now at Statement 1(a).

DETENTION OF MR. DON BOSCO OOGA
GICHANA IN ARUSHA, TANZANIA

Sen. Haji: Mr. Speaker, Sir, Sen. Kennedy Mong'are Okong'o requested for a Statement regarding the case of Mr. Don Bosco Ooga Gichana in Arusha, Tanzania. I will go straight to the answer instead of reading the questions which had been raised. The answer is as follows:-

(a) It has been indicated by the High Commission in Dar es Salaam that all decisions and actions relating to the matter were done in accordance with the legal procedures in Tanzania.

(b) The Ministry recommends that the family of the subject should engage a lawyer in Tanzania to handle the matter accordingly, both professionally and legally.

(c) This, we understand was done in accordance with the Tanzania legal procedure occasioned by discovery of new evidence.

(d). The absence of a prosecuting attorney – he is said to be engaged according to Tanzanian legal and judicial process.

The High Commission in Dar es Salaam has severally written to the Ministry of Foreign Affairs and International Cooperation of the United Republic of Tanzania to request for more information on this matter, keeping in mind that justice delayed is justice denied. The latest such correspondence was sent to the host Government in early October, 2015. After that, the issue was raised during President Jakaya Kikwete's visit to Kenya from 4th to 6th October, 2015. The host Government has pledged to revisit this issue and their comprehensive response is expected soon after the 2015 election and the formation of a new Government.

It is worth noting that there are several Kenyans held in custody in Tanzania whose cases have never been heard nor determined. The Ministry of Foreign Affairs and International Trade will soon hold the third Kenya-Tanzania Joint Commission for Cooperation meeting, where all these cases will form part of the issues for deliberation and possible resolution. Mr. Don Bosco Gichana's case will feature if it will still be pending.

Sen. Okong'o: Mr. Speaker, Sir, I agree with what Se. Haji has said. However, I discount the issue of Tanzanian laws because they are violating fundamental rights of citizens. Tanzania is a signatory to the UN Charter on Fundamental Human Rights.

The consolation though is that this matter has attracted the attention of the outgoing President of the Republic of Tanzania. Mr. Gichana's family and some of us who have been following this will follow it even more aggressively to its logical conclusion. I appreciate and thank the Committee, though they took a lot of time. I can see the light at the end of tunnel.

Sen. Haji: Mr. Speaker, Sir, I agree with Sen. Monga're Okong'o because this case is very serious. He is being accused of money laundering to the tune of Kshs6 billion. Officials at the Ministry of Foreign Affairs have already told us that there are many other Kenyans with lesser crimes that are being held there. Since there was going to be a meeting between the two Ministries, hopefully, Sen. Mong'are's question will be properly addressed at that time.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, the case of this young man, Don Bosco Gichana, is a very sad one. This is a Kenyan national. It is irrelevant that he has been arrested and suspected of committing a criminal offence. That does not take away his rights. He has been in custody in a friendly country for over two years. This is unacceptable.

This matter may not be adequately dealt with in this manner that we are dealing. I urge you to allow the Chairperson of the Committee to which I belong, to summon the Attorney General and the Cabinet Secretary (CS) for Foreign Affairs to explain to the Senate why the Government has abdicated its responsibility to protect the rights of Kenyans regardless of where they are. A Kenyan remains a Kenyan and must enjoy the protection of the State regardless of their affiliation, ethnicity, religion or whatever they subscribe to. I urge the chairperson to find a better avenue.

As I conclude, I have also had an opportunity on the request of the distinguished Senator for Nyamira to mention this matter to the retiring President of Tanzania. The

impression I have had is that it is a State-to-State matter, not just a matter being suspected of committing a crime of the magnitude that the distinguished Chairperson has mentioned.

The Speaker (Hon. Ethuro): Order, Senators! I am at a loss whether to castigate or appreciate the Senate Leader of Minority. To castigate in the sense that it is clarification time or appreciate him because he picked an issue that I was about to suggest. It is within the powers of the Committee to prosecute this matter further by summoning the relevant State agencies to shed more light on the same. Mr. Chairperson, you can do so, and the Senate Minority Leader being a Member of the Committee, will assist you.

Sen. Haji: Mr. Speaker, Sir, this matter had been raised with the Head of State of Tanzania. It will not help much by calling Kenya's Attorney General (AG) on a matter that is in another country. The CS, Foreign Affairs has explained herself here, very well that, on 4th they will raise the issue. There will be a meeting in Tanzania to discuss the same. We should avoid duplicating the matter because the AG will not add any value. We cannot force Tanzania to do what they do not want to do.

The Speaker (Hon. Ethuro): Order, Senators! This is a very straight forward matter. Mr. Chairperson, nobody is asking you to duplicate. You can as well wait for the outcome of that meeting. In any case, you need to know.

(Sen. Wetangula spoke off record)

Order, Senator! This is Statement time. You will provide the same in the Committee. I have directed the Committee to prosecute this matter beyond this Statement.

DEATH OF MS. MAURINE TATA DURING DELIVERY AND
THE DETERIORATING HEALTH STANDARDS IN KENYA

The Speaker (Hon. Ethuro): Do you have a response?

Sen. Kittony: Yes, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): That will be pushed to next week because Sen. Kanainza is not here.

(Statement deferred)

SUSPENSION OF RADIOTHERAPY TREATMENT AT THE
KENYATTA NATIONAL HOSPITAL

Sen. Kittony: Mr. Speaker, Sir, I have the response requested by Sen. Dullo Adan. She had requested us to include the specific information as follows.

- i. State and explain the circumstances leading to the suspension of radiotherapy treatment at Kenyatta National Hospital (KNH) on 16th March, 2015.
- ii. State and explain the interim measures that the Ministry took to ensure that patients who were on radiotherapy treatment at the hospital before the suspension continue with treatment as scheduled to avoid loss of lives.

- iii. State how many lives, if any, have been lost as a result of the shutdown and give an indication on when radiotherapy treatment will resume at KNH.
- iv. Explain why KNH is the only public radiotherapy facility in the country and has only two radiotherapy machines, which are worn out and need to be replaced.
- v. Explain why radiotherapy is classified as an outpatient treatment and, therefore, not covered by National Hospital Insurance Fund (NHIF).
- vi. State the measures that the Ministry of Health plans to take to ensure more radiotherapy treatment centres are established countrywide to serve all Kenyans and prevent loss of lives due to unavailability and inaccessibility of the service.

The suspension of the radiotherapy treatment service on 16th March, 2015, was due to breakdown of equipment. One of the radio therapy equipment which is 22 years old had excessive table sag which is irreparable due to age, wear and tear.

The second equipment had its electron component affected due to a power surge. Repairs were completed on 19th March, 2015, followed by the recalibration and testing on 20th, 21st and 22nd March, 2015. Normal services resumed on 23rd March, 2015.

Following the breakdown of radiotherapy equipment at the Cancer Treatment Centre at the Kenyatta National Hospital (KNH), the following measures were instituted immediately:-

- (i) KNH management engaged the private sector with radiotherapy facilities (The Nairobi Hospital and Aga Khan Hospital) and requested them to accept the patients on treatment. Forty six patients were transferred to these institutions to continue with treatment free of charge. The rest of the patients numbering 105 continued treatment at KNH after the repairs of the equipment.
- (ii) KNH management extended the working hours of the cancer treatment centre in a bid to clear the backlog.

There were no lives lost as a result of the shutdown. Following repairs and calibration of the equipment, normal service resumed on the 23rd March, 2015.

Radiotherapy is a highly specialised service which requires highly specialised personnel and equipment. Training of radio-oncologists is costly, lengthy, and not locally available, hence resulting in shortage of manpower in this area. Currently, there are less than 10 radio-oncologists in the country. This manpower shortage has limited expansion of radiotherapy services in the country.

Further, the Ministry has been functioning on inadequate resources which have to be spread across many competing needs. Against the Abuja Standard of 15 per cent of the national budget, the Ministry has never been allocated more than 8 per cent. For a long time, communicable diseases have exerted pressure on the available resources to the detriment of non-communicable diseases, which have lately become associated with high levels of mortality and morbidity. The resources gaps have also contributed to inadequate investment in cancer treatment.

The NHIF does not categorize radiotherapy as outpatient treatment. It is a service that can be provided to both outpatient and inpatient. Cancer ailments are chronic conditions that may cost a lot to manage and radiotherapy is provided on a need basis. The NHIF is currently in the process of quantifying average costs of radiotherapy with a view of introducing a cover for the service, separate from other outpatient and inpatient provisions. A similar process has recently been completed for renal dialysis.

For a long time, KNH has been the only public facility offering radiotherapy facilities in the country. Currently, KNH acquired a linear accelerator, a modern machine which is used for radiotherapy, among other services. The equipment has already been installed and will be commissioned soon.

Further, plans are underway to install two radiotherapy machines at Moi Teaching and Referral Hospital. In addition, the Government has secured funding from a development partner for construction of a cancer centre at Kisii Level 5 Hospital. These initiatives will reduce the burden of treating cancer patients in the public sector. Diagnostic support for cancer in the county health facilities has been incorporated in the ongoing Management Equipment Service (MES) programme.

Moving forward, the Ministry is currently finalizing the cancer prevention and control strategy. One of the proposals in the strategy is to create regional radiotherapy centres and thus expand the country's ability to control cancer.

The response is signed by Mr. James W. Macharia, Cabinet Secretary (CS) on 7th March, 2015.

Sen. Adan: Thank you, Mr. Speaker, Sir. First, let me thank Sen. Kittony for giving me the response. However, I wish to express my disappointment because I had requested this Statement on 16th March, 2015, when the issue was very serious. This is almost five months down the line when the Ministry is responding. Clearly, this shows how the Ministry is not serious with this matter and yet cancer is a killer disease in this country.

We are being told that KNH has a machine that is 22 years old. We have not been told ---

The Speaker (Hon. Ethuro): Order, Senator! Seek clarification. Do not repeat what has been said. We heard what was said.

Sen. Adan: Mr. Speaker, Sir, I am just building on that.

The Speaker (Hon. Ethuro): No, do not build on it.

Sen. Adan: Mr. Speaker, Sir, okay. Could the Ministry tell us what plans they have in replacing this 22 year old equipment that breaks down year in, year out, and Kenyans end up losing their lives?

Secondly, now that they have introduced renal dialysis for those patients, why can the NHIF not take care of cancer patients?

Sen. Musila: Mr. Speaker, Sir, the reason it is has taken the Ministry so long to respond to this important Statement is because they are ashamed and embarrassed to bring such a response to this august House.

Kenya has a population of 42 million. As we know, cancer is on the rise in this country. In fact, this month, Kenya is marking the cancer month alongside other countries of the world. It is disheartening to hear the Vice Chairperson talk about two machines to cater for a population of nearly 20 million, given that nearly 50 per cent of Kenyans have cancer conditions.

Three weeks ago, I lost my aunt who was waiting for an appointment for 2017 given by KNH. It is that bad. Appointments are being given deliberately many years to come. Who can wait for an appointment in 2017? Going by the large number of people on the waiting list for radiotherapy out of cancer and going by the amount of money that is being stolen in Government, is it not prudent to take some of this money that is being

stolen, especially from National Youth Service (NYS) and buy as many machines as possible to serve Kenyans?

Sen. Munyes: Mr. Speaker, Sir, I appreciate the Vice Chairperson for the suggestion that we decentralize regions. In my understanding, our region is northern Kenya. I know the Vice Chairperson will be talking about the older provinces like Rift Valley. Cancer is becoming a killer disease in many regions. In Turkana County, for example, we have so many cases and people do not know they are suffering from cancer. Mandera and Wajir counties are a distance away from Nakuru County. I hope when the Chairperson responds, the definition of your region will be maybe at the county level.

Sen. Ndiema: Mr. Speaker, Sir, this is a very serious issue. I seek to get clarification as to whether the Government is serious in the policy statements of providing health services to its people. This is because we are spending a lot of money sending patients to India to treat them.

Just last weekend, we had to do a fundraising. We raised money to spend on cancer treatment in foreign countries when we have young people who can be trained as oncologists. We can even procure equipment because it makes no sense to go into mega projects when projects that serve and save the lives of the people are neglected. Are we really guaranteeing people life as enshrined in the Constitution?

Sen. Kisasa: Mr. Speaker, Sir, chemotherapy machines normally destroy the normal body cells. That is why the appointments are not as frequent as maybe Kenyans would like them to be.

The Speaker (Hon. Ethuro): Before you proceed, Vice Chairman, Sen. Kisasa is out of order. It is not her business to respond.

Sen. Kittony: Mr. Speaker, Sir, I commend Sen. Adan for creating awareness because most of these Senators did not know what they have. Now, we are all aware that we have two machines in the KNH. Therefore, it is your mandate to know your fate and situation.

To answer Sen. Munyes' question, yes, it gives us an opening. We, as a Committee, need to consider putting the machine in Nakuru which is in the former Rift Valley Province.

I also want to mention that the response to the question---

Sen. Haji: On a point of order, Mr. Speaker, Sir. The Vice Chairperson is misquoting Sen. Munyes. He said that instead of former provinces, the machines should go to the counties because of the distance.

The Speaker (Hon. Ethuro): That is correct to my understanding. She is not only misquoting, but also misrepresenting.

Sen. Kittony: Mr. Speaker, Sir, I have noted that. However, to respond to issue of the question having delayed for the past five months, this was not within our hands. It took so long with the Ministry and we have just got it now. That is why I am giving you the response. Maybe, that gives us a chance, as a Committee, to go back and find out more on what should be done because that is a serious issue. Kenyans need treatment.

Mr. Speaker, Sir, I have answered according to what the Cabinet Secretary (CS) wrote. That is in the public domain.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): What about Sen. Musila's concerns?

I want to remind the Vice Chairperson and all Members of the Committee on Health that in addition to your mandate, which must be obvious to all of us, there is also Article 47, and I have said this from this Chair repeatedly. It states that:-

“Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.”

Sen. Kittony, there is a word that is known as “expeditious.” You consider it to be expeditious that the question is answered five months after the only two machines in a public hospital broke down? That is not acceptable. The work of Parliament is to cause action. Therefore, if you cannot do so, do you expect the ordinary people to make it happen?

Sen. Musila: On a point of order, Mr. Speaker, Sir. I have a lot of respect for my sister Senator. With due respect, she has not addressed the issues that I raised. She only addressed the issue of delay. However, more fundamentally, I raised the issue of the hospital giving people ridiculous appointments of up to 2017 from now. No patient will wait until then. I gave an example of my own aunt who recently lost her life awaiting that long ridiculous appointment.

Sen. Kittony: Mr. Speaker, Sir, we, as a House, also have a responsibility. The Ministry said that its budget is limited for such particular machines. That opens a discussion so that the situation can be salvaged because that is a problem that we are all facing. I have mentioned that the budget is limited and that has to be addressed.

The Speaker (Hon. Ethuro): Next Statement (f) is about the killing of Mr. Joshua Mungai, a First Year student at Maseno University.

KILLING OF MR. JOSHUA MUNGAI, A FIRST YEAR STUDENT AT MASENO UNIVERSITY

Sen. Haji: Mr. Speaker, Sir, on Thursday, 15th October, 2015, Sen. Ndiema requested for a Statement on the killing of Mr. Joshua Mungai, son of Mr. Kariuki of Kalwengwe Village in Trans Nzoia. The hon. Senator ought to be informed on several issues. If he does not have any objection, I will go straight to the reply in order to save on time.

Mr. Speaker, Sir, the Government is aware of the death of Mr. Joshua Mungai, a First Year student in Maseno University which occurred on 12th October, 2015, at Jaramogi Oginga Odinga Teaching and Referral Hospital in Kisumu.

The circumstances leading to the unfortunate and fatal death of the student are that on 12th October, 2015, at around 5.30 p.m., a group of university students aligned to one of the candidates vying for Students’ Organisation of Maseno University Chairmanship blocked the main Kisumu-Busia Highway before harassing and robbing motorists and other road users. The students were protesting against the launching of election campaign by other contesters while their preferred candidate had not been cleared to contest by the university authority, most likely for failing to meet the qualifications.

Consequently, police officers from Maseno Police Station immediately moved to restore law and order. However, the students started throwing stones and other crude weapons at the police officers, prompting the officers to fire teargas canisters to disperse them. A stampede ensued resulting to injuries to 10 students who were treated at the

University Dispensary. Later, four of them, including the deceased, were referred to Jaramogi Oginga Odinga Teaching and Referral Hospital. However, the deceased died while undergoing treatment. The other three students were admitted and discharged the next day, 13th October, 2015.

Mr. Speaker, Sir, investigations were commenced immediately and an Inquest File No.6/2015 opened. A postmortem was conducted on 13th October, 2015, which revealed that the cause of death was due to severe head injury, secondary to blunt force trauma. I wish to table the copy of the postmortem result investigations to establish the cause of death. If any person was culpable, there are ongoing investigations.

Mr. Speaker, Sir, compensation to the family can only be determined by a court of competent jurisdiction only after investigations are completed.

Lastly, Mr. Speaker, Sir, the Government has taken the following measures to enhance security in learning institutions in the country:

(1) Deployment of security officers to some of the learning institutions upon request by the administration.

(2) Frequent meetings between stakeholders in the education sector and local leaders to discuss the modality of addressing any concerns in the learning institutions.

(3) Enhanced police patrols.

Thank you, Mr. Speaker, Sir.

(Sen. Haji laid the document on the Table)

Sen. Ndiema: Mr. Speaker, Sir, I thank my senior, Sen. Haji, who is the Chairman of the Committee on National Security and Foreign Relations, for responding. I only want to seek certain clarifications. The young man, a First Year medicine student from Khalwengwe Village in Trans Nzoia, was in the university for only 40 days. There are certain issues I would like to be clarified.

(1) Could the Chairman clarify whether or not the death was actually caused by police officers themselves?

(2) We have been told that the disturbance there occurred because the University barred a student from standing for elections. Has it been investigated to confirm why the student was barred?

(3) Why did police officers not move in to defuse the situation, in a proactive manner well in advance, instead of waiting until the situation was out of control only to go there and add fuel to the fire by forcefully dispersing students?

(4) When will the investigations be completed?

Sen. Haji: Mr. Speaker, Sir, in the Statement, it was clearly stated that investigations are going on and if anybody will be found culpable, necessary steps will be taken. As to the allegations that the police aggravated the situation, that is incorrect. According to the statement, when students started rioting, police reinforcement had come all the way from Kisumu to Maseno. Therefore, there was no time to arrest the situation when it started.

That is the best I could do in answering my brother.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, from the answer given by the Chairman, it is quite clear that the police used unreasonable force to

disperse a group of students who were unarmed and simply demonstrating to express their displeasure at what was happening.

When an inquest is opened, in ordinary circumstances, it means there is culpability, but it is not quite clear who the suspect to be prosecuted is. The police would always open an inquest with a suspect in mind. Could he tell us whether any of the police officers who fired teargas canisters that caused the stampede is named in the inquest file as a possible suspect? If not, who is the possible suspect because, at the end of the day, the family of this student will have to seek compensation from somebody somewhere? If it is a policeman, they will have to seek compensation from the state.

The Speaker (Hon. Ethuro): Order, Sen. Wetangula!

Proceed, Sen. Haji.

Sen. Haji: Mr. Speaker, Sir, I differ with my brother here because to say that the police used excessive force is not true because the statement stated that the students had put up a roadblock, harassing motorists and taking money by force from them. The police did not fire any live ammunition. They used teargas which is normally used in such a situation. As to who is culpable for this, investigations going on will adduce who is responsible and the law will take its course.

The Speaker (Hon. Ethuro): Let us move on to Statement (g); the Senate Majority Leader on *El Nino*.

Statement (h) is deferred to next week same day and Statements (i) and (j) are deferred to tomorrow.

CONSTRUCTION OF KAKAMEGA-KABURENGU-WEBUYE ROAD

STATUS OF ROAD CONSTRUCTION IN URBAN CENTRES BY KENYA URBAN ROADS AUTHORITY (KURA)

ISSUANCE OF TITLE DEEDS IN MERU COUNTY

(Statements deferred)

THE GOVERNMENT'S PREPAREDNESS IN MITIGATING EFFECTS OF THE IMPENDING *EL NINO* RAINS

Sen. Keter: Mr. Speaker, Sir, unfortunately I do not have the response. Could I undertake to issue it tomorrow?

Sen. Kagwe: On a point of order, Mr. Speaker, Sir. Even as the hon. Senator says that he does not have a prepared statement regarding *El Nino*, can he at least confirm whether there is an *El Nino* or not?

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Speaker, Sir. In addition to what the distinguished Senator for Nyeri has requested, did you notice that the office of the Majority Leader was completely unaware that this Statement was coming today and yet you, the Speaker, ordered that due to the urgency and the emergency involved, this House needed to be informed about *El Nino*? What we are seeing now is not *El Nino*, but money raining in people's pockets in the usual Jubilee style of endless corruption. We are not seeing any *El Nino* anywhere, it is the *El Nino* of

money; Kshs30 billion--- We need a statement to tell us how much money, where it is targeted and who is managing this money.

Sen. Keter: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): You do not need to rise on a point of order because you are the one responding.

Sen. Keter: Mr. Speaker, Sir, this House has been a House of respect and we do not have to trivialize issues. I have utmost respect for the Senate Minority Leader when he says that it is “raining money”. This is not the “Tokyo affair”. Let us be serious; *El Nino is El Nino*. If you want us to say that the Jubilee Government is corrupt; let us find out who is more corrupt. Where is the Tokyo plot? We respect you so much, but when you start saying things here---

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir---

The Speaker (Hon. Ethuro): Order, Leader of Minority!

(Loud consultations)

Order, Senators!

(Sen. Wetangula and Sen. Keter stood on their feet)

Order! Both of you resume your seats.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Order, Sen. Wetangula! Let the deputy Majority Leader finish then I will allow you.

Sen. Keter: Mr. Speaker, Sir, I will undertake to give a response tomorrow in the afternoon, including what the Senator for Nyeri County has asked now as to whether there is *El Nino* or not.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, I rose on a point of order as a leader in this House. As the alternative Government, it is our duty to critique the Government of the day and point out what is not happening. None other than the President of this country has stood in this Parliament and dropped names of one-third of his Cabinet as corruption suspects. He sent them home. Of course, the most missing name in that list was his own ally who is building houses worth billions, who is buying land like a lunatic---

Sen. Keter: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): Order, Senators! Let me make it abundantly clear. There is actually no matter before the Floor.

(Sen. Wetangula spoke off record)

Order, Sen. Wetangula!

(Sen. Keter spoke off record)

Order, Senators!

The Speaker (Hon. Ethuro): Order, Senators! Let us bring order to the House.

(Sen. Wetangula spoke off record)

Order, Senate Minority Leader! This House will not be turned into a political contest between Jubilee and CORD. You have plenty of opportunities for that one outside this House. For now, we have a House of Senators responsible to the Republic of Kenya. I will enforce to the best of my abilities what is required of me. Whether you are an ordinary Member, the Senate Minority Leader or the Senate Deputy Majority Leader, you are subject to the rules of this House. Do not impute improper motives on another Senator and do not speak out of turn without seeking the permission of the Speaker. If you proceed along those lines, I will not hesitate to use my authority for as long as you have given it to me. I cherish the opportunities to do so. Therefore, be advised.

(An hon. Senator spoke off record)

Order! Even those ones who repeat after me might suffer my consequences.

Order, Members! We have the last response from the Senate Deputy Majority Leader on the Statement sought by Sen. Khaniri.

Sen. Khaniri: On a point of order, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): What is it, Sen. Khaniri?

(Sen. Khaniri consulted another Senator)

Order, Sen. Khaniri, I have given you the Floor, who else are you consulting?

DEATH OF MR. ALEX MADAGA FOLLOWING
A ROAD ACCIDENT

Sen. Khaniri: On a point of order, Mr. Speaker, Sir. I am being intimidated by the Senate Deputy Majority Leader.

I am fully aware that you have given me the Floor. If it is in regard to Statement (e) on our appendix, I have not received it. However, I would be uncomfortable to listen to it for the first time on the Floor of the House. I would rather be given an opportunity to go through it before it is delivered.

Sen. Keter: Mr. Speaker, Sir, a few minutes ago, you gave me the mandate to talk to the Cabinet Secretary and the Principal Secretary, Ministry of Health. I managed to talk to the Cabinet Secretary who is in India with the President. He told me the statement had been signed by the Principal Secretary and sent to Parliament at 11.00 a.m. I have also received a copy right now. However, I have not gone through it. Will I be in order to request the Vice Chairperson of the Committee to give the response tomorrow? I have done my work by delivering and that shows seriousness. I would like to urge all the Committees to be serious. They should even call the Ministries so that they give responses. It is true that Sen. Khaniri does not have a copy of the answer. Therefore, I request for deferment to tomorrow.

The Speaker (Hon. Ethuro): Order, Senators!

Sen. Keter: Sen. Khaniri has got it now. Could the Chairperson respond tomorrow?

The Speaker (Hon. Ethuro): Sen. Keter, do you understand the meaning of the word “order?”

(Laughter)

I directed that the statement will be issued by Senate Deputy Majority Leader tomorrow, but because he has been updating me of his progress, and in appreciation of his ability and capacity to get it signed irrespective of the geographical location of the Cabinet Secretary, I thought that he needed appreciation by the House.

(Applause)

That is not sufficient appreciation.

(Applause)

However, Sen. Khaniri has made a valid point that he does not have the statement and in this House we do not believe in ambushes. Therefore, we will go by the original directive that the Senate Deputy Majority Leader - he cannot run away because he has delivered the statement. Ultimately, all those other Committees are acting on your behalf and although, we appreciate you can delegate, I really want you to respond to this one because it has gone beyond the Committee.

Next order!

Sorry, Sen. Omondi, you have been on it for a while.

Sen. Omondi: Mr. Speaker, Sir, I rise to seek a Statement – I was expecting the response from Sen. Adan, only to find out that I am supposed to request for the Statement officially. I beg you to give me permission to seek the statement.

The Speaker (Hon. Ethuro): Neither can you ambush the Chair just because you were ambushed with information. You know what to do; get the Statement to my desk; I will accord you the opportunity tomorrow.

Sen. Omondi: Mr. Speaker, Sir, last week, I was advised wrongly because I was to seek the Statement and---

The Speaker (Hon. Ethuro): You are absolutely right, Senator. You were advised wrongly; now you have been advised properly. The proper advice supersedes the wrong one.

Proceed, Sen. Haji.

THE CS, INTERIOR AND CO-ORDINATION OF NATIONAL
GOVERNMENT TO APPEAR BEFORE THE SENATE ON
TUESDAY, 3RD NOVEMBER, AT 11.00 A.M.

Sen. Haji: Mr. Speaker, Sir, with your permission, I wish to inform the Senate that the Cabinet Secretary for Interior and Coordination of National Government will

appear before the whole House on Tuesday at 10.00 a.m. Therefore, all Senators are invited so that he can answer all the questions that are outstanding.

The Speaker (Hon. Ethuro): Is that what your Vice Chairperson told the House yesterday?

Sen. Haji: Mr. Speaker, Sir, it is the Chairman now who is informing the House. This communication has been in writing. I did not want to go by---

The Speaker (Hon. Ethuro): Sorry?

Sen. Haji: Mr. Speaker, Sir, I did not want us to go by verbal communication. Therefore, I requested to be given this in writing; I have been given this confirmation.

The Speaker (Hon. Ethuro): Are you telling us that all the time your Vice Chairperson has held brief for you, it has never been in writing?

Sen. Haji: No, Mr. Speakers, Sir, she has done very well.

The Speaker (Hon. Ethuro): That we should not take seriously whatever she tells this House?

Sen. Haji: No, Mr. Speaker, Sir; she is very efficient, even better than me. I have no reason to doubt her. I am only informing the House. I was not even aware that she had provided this information because I was not here late afternoon.

The Speaker (Hon. Ethuro): Mr. Chairman, we appreciate, it is only that our Committees must learn to communicate first because your Vice Chairperson was taken to task yesterday and she committed to come to the House on Thursday to communicate. Therefore, you only needed to make reference that as stated by the Vice Chairperson yesterday, we have actually brought it forward. That is all the House would appreciate. That is the end of Statement Time.

Sen. Haji: Noted, Mr. Speaker, Sir.

COMMUNICATIONS FROM THE CHAIR

VISITING DELEGATION FROM VIHIGA COUNTY ASSEMBLY

The Speaker (Hon. Ethuro): Hon. Senators, before we proceed, I have a communication to make. The first two are similar, just to recognise and acknowledge the presence, in the Speaker's Gallery this afternoon, of visiting members and staff from Vihiga County Assembly, Committee on Justice and Legal Affairs. The County Assembly Members and staff are here on a two-day benchmarking visit with the Committee on Legal Affairs and Human Rights. I request each Member of the delegation to stand when called out so that they may be acknowledged in the Senate tradition. They are:

- | | |
|-------------------------------|------------------|
| 1. Hon. Khalid Khamisi Balala | Chair |
| 2. Hon. Venna Kaisha | Vice Chair |
| 3. Hon. Andrew Ahuga | Member |
| 4. Hon. Rhoda Omufumu | Member |
| 5. Hon. Reuben Ombima | Member |
| 6. Hon. Elizabeth Muhonja | Member |
| 7. Shera Didi | Legal Counsel |
| 8. George Kibisu | Serjeant-at-Arms |

9. James Ngeresa

Committee Clerk

On behalf of the Senate and on my own behalf, I welcome them to the Senate and I wish them a fruitful deliberation during their stay at the Senate.

VISITING DELEGATION KILIFI
COUNTY ASSEMBLY

Hon Members, similarly, I would like to acknowledge the presence, in the Speaker's Gallery this afternoon, of visiting members and staff from the Kilifi County Assembly Committee on Justice and Legal Affairs. The County Assembly Members and staff are here on a two-day benchmarking visit with the Committee on Legal Affairs and Human Rights.

I request each member of the delegation to stand when called out so that they may be acknowledged in the Senate tradition.

They are:-

1. Hon. Valentine M. Matsaki	Chairperson
2. Hon. Barka A. Mohammed	Vice Chairperson
3. Hon. Stephen Bahati Mlanda	Member
4. Hon. Esther Dzidza	Member
5. Hon. Adamson Mwathethe Kadenge	Member
6. Hon. Grace Mbodza Chihanga	Member
7. Hon. Anderson Ngombo Kithi	Member
8. Hon. Nixon Mramba	Member
9. Hon. Cosmas F. Kenga	Member
10. Rashid Mbeto	Senior Legal Counsel
11. Lillian Ngala	Clerk Assistant I
12. Eric Libendi	Committee Clerk
13. Mercy Kuria	Research Officer
14. Elizabeth Tatu	Hansard Reporter
15. Elijah Koi	Commissionaire

On behalf of the Senate and on my own behalf, I welcome them to the Senate and I wish them fruitful deliberations during their sojourn in the Senate.

I thank you.

Sen. Khaniri: Thank you very much, Mr. Speaker, Sir. Allow me to join you in welcoming the distinguished delegations from Vihiga and Kilifi County assemblies. I am proud to be the representative of the distinguished County of Vihiga in this House.

I want to thank you, on behalf of Vihiga Assembly, for coming up with the programme to provide capacity building to our county assemblies. I assure you that Vihiga County Assembly has taken full advantage of the programme you introduced. This is the third delegation that is visiting us on this particular mission.

Mr. Speaker, Sir, we first received the House Business Committee about a month ago. Last week, we received the Committee on Delegated Legislation and now we have the Justice and Legal Affairs Committee. This shows the county assembly has embraced the programme and they believe in the Senate. I have always told them that they should look at the Senate as their strategic partner in matters of oversight of the counties. It is this same Committee that is visiting us today, that presented the Petition that I presented

to the House last week on the matter of Registration of Persons and Identification Cards (ID). They are doing a wonderful job in Vihiga. I want to join you in wishing them a successful sojourn in this August House.

Thank you.

Sen. Mutula Kilonzo Jnr.: Thank you, Mr. Speaker, Sir. I have just looked back and I have not seen the Chairman of Justice and Legal Affairs Committee, the Vice Chairman is also missing. So, allow me on behalf of the Committee to welcome the two county assemblies; Vihiga and Kilifi. Since Sen. Madzayo is not here and he is my colleague and learned friend, I also want to welcome them.

Mr. Speaker, Sir, I am surprised that in the case of Vihiga, you said you wish them a fruitful deliberation and in the case of Kilifi, you said they are on a sojourn which have different meanings.

The Speaker (Hon. Ekwee Ethuro): Order! You are comparing oranges and apples. You should talk about the stay and the sojourn.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, for those who are on a sojourn, I wish them a fruitful sojourn. For those who are on a visit, I hope they can seek our Committee for a visit before they leave because I am not aware of a meeting with our Committee.

Thank you.

Sen. Keter: Thank you, Mr. Speaker, Sir. Let me join you and my two colleagues in welcoming the delegation from Vihiga and Kilifi counties. In the Senate, they will find their friends in terms of protection of devolution, and we wish them a fruitful stay, learn good things and go and implement in your respective counties. To my brother, Senator from Vihiga, he is a very good Senator, take care of him; he advocates your issues very well.

Sen. Omondi: Mr. Speaker, Sir, thank you for giving me the opportunity. I want to join you to welcome the two counties that are visiting us this afternoon; Vihiga and Kilifi counties. I am so happy that we are able to get counties releasing their staff and Members of the County Assembly to come and learn how things are done in this House. I am sure that they are going to give good services to the people they are taking care of.

I wish them a fruitful stay in this City of Nairobi.

Sen. Haji: Asante sana, Bw. Spika. Ningependa kuungana na wewe pamoja na wale wote ambao wamewakaribisha ndugu zetu. Mimi kama rafiki wa watu wa Kilifi na watu wa Mkoa wa Magharibi. Nimekuwa Mkuu wa Mkoa wao na nawaambia karibuni na ninawatakia heri na baraka za Mwenyezi Mungu. Wakati watakapokuwa pamoja na sisi, waitumie hii fursa kwa njia nzuri; kuzoea yale ambayo wamekuja kujifunza. Pia wakirudi, wasalimie wenzao ambao waliwawacha kule nyumbani.

Asante sana.

Sen. Kembi-Gitura: Thank you very much, Mr. Speaker, Sir. I am a Member of the Justice and Legal Affairs Committee. I would like to join my colleagues to welcome our colleagues and friends from the two counties of Kilifi and Vihiga. Just to emphasize and underline the importance of that symbiotic relationship between the Senate and the county assemblies, and also the importance of capacity building that the county assemblies rarely have and that they can learn from the Senate. I would like to assure them and those that have not come for benchmarking in capacity building, that the Senate

is ready, willing and able at all times to help where it can because we want to see devolution working for all of us.

Mr. Speaker, Sir, it is important at this point as a Member of that Committee to request the two delegations to familiarize themselves very seriously with Article 185 of the Constitution which clearly states out the role of county assemblies, particularly on oversight. If that oversight role is not exercised at all times by the county assemblies, you will find that a lot of things could go wrong at the counties.

As Sen. Khaniri said, we have a Petition from the County Assembly of Vihiga. We, as a Committee, are taking it very seriously. We are examining it and there will be public participation on it because we believe that the county assemblies and the Senate must work hard and at all times together, if devolution is to succeed. For those of us that believe in devolution, the need to work together is very important.

Mr. Speaker, Sir, may I welcome them and request them that when they go back to their counties, let those other committees that need to capacity build with us in the Senate, know that they are very welcome at all times in the Senate.

Sen. Chelule: Mr. Speaker, Sir, I join my fellow Senators in welcoming the MCAs from Kilifi and Vihiga counties. I also thank you for coming up with new programmes that will empower them in a way that will impact positively on the communities and the county assemblies. We are here for them and I am impressed that they are gender sensitive. *Karibuni.*

Sen. Kisasa: Bw. Spika, nami nakuunga mkono nivae hii njuga nikaribishe viongozi wangu wa Kaunti ya Kilifi na wale wa Kaunti ya Vihiga.

The Speaker (Hon. Ethuro): Samahani Seneta. Ati uvae nini?

Sen. Kisasa: Bw. Spika, nivae njuga.

(Laughter)

The Speaker (Hon. Ethuro): Tafadhali endelea.

Sen. Kisasa: Bw. Spika, pia mimi navaa njuga kukaribisha viongozi wa Kaunti za Kilifi na Vihiga. Ukiona mbari jua zinduna iko nyuma. Hili sio kundi la mwisho kuja kututembelea hapa. Ninawasihi watu wa Kilifi wajisikie nyumbani na wajimwage katika jiji hili. Mimi ni mmoja wenu na pia Seneta maalum. Watu wa Vihiga pia nawakaribisha. Tunaye Sen. Khaniri hapa. Yeye ni kiongozi wa maendeleo kabisa. Kwa hivyo, mjihisi nyumbani na wengine waje pia kwani mikono yetu i wazi kuwalaki. *Karibuni.*

Sen. Mbuvi: Asante, Bw. Spika. Nimerudi leo hapa Seneti baada ya kupotea kwa muda mrefu. Nilikuwa naomboleza marehemu baba yangu. Nachukuwa fursa hii kama Seneta wa Kaunti ya Nairobi kuwakaribisha ndugu zetu kutoka Kaunti za Kilifi na Vihiga. *Karibuni sana Nairobi. Mjihisi nyumbani. Mimi ni mwenyeji wa Kaunti ya Kilifi kwa sababu nina boma huko. Nitaongea na Sen. Khaniri anitafutie boma nyingine katika Kaunti ya Vihiga ile tuzidishe upendo kama viongozi wa Jamuhuri ya Kenya.*

Karibuni sana na mjihisi nyumbani.

The Speaker (Hon. Ethuro): Sen. Moi Gideon Kipselei Towet.

Sen. Moi: Kijana wa Mzee.

(Laughter)

Mr. Speaker, Sir, I take this opportunity to welcome the MCAs from Kilifi and Vihiga counties. I wish them a fruitful stay in Nairobi. They should know that we are partners in devolution. It is us who will make or break devolution in this county. I wish them well and a good stay here in Nairobi. Greetings to all back home.

Sen. Kittony: Mr. Speaker, Sir, I join you in welcoming the distinguished delegates from Kilifi and Vihiga counties to this august House. They are in the right place. They have come to meet their father and that is the right thing to do. I, therefore, wish them well and a safe journey back home.

COMMUNICATION FROM THE CHAIR

PROCEDURE FOR DISPOSAL OF PRESIDENTIAL MEMORANDA ON THE PUBLIC AUDIT BILL AND THE PUBLIC PROCUREMENT AND ASSETS DISPOSAL BILL

The Speaker (Hon. Ethuro): Hon. Senators, I also have another communication to make. On 1st October, 201, I issued a communication detailing the procedure to be followed on the disposal of the Presidential Memorandum on the Public Audit Bill, 2014, and the Public Procurement and Asset Disposal Bill, 2014.

In the Communication, I noted that the Joint Committee had failed to agree on the President's reservations and consequently ruled that the two Memoranda be scheduled for consideration on the week starting 6th October, 2015.

After my Communication, several Senators, including Sen. Hassan Omar Hassan, Sen. Moses Wetang'ula, Sen. James Orengo and Sen. (Dr.) Boni Khalwale, canvassed the matter and urged the Speaker to stay the consideration of the Memoranda to allow consideration of the following issues –

1. Whether the President, who is not a Member of Parliament (unlike in the repealed Constitution) can participate in law making, by exercising veto power?
2. Whether the reservations in the Presidential Memoranda can include introduction of new sections that were not contemplated in the Bill as passed in the first instance?
3. Whether the new clauses introduced in the Memorandum need to go through the usual legislative processes of First, Second and Third Readings.

I undertook then to give further guidance on the matter before the Senate could consider the Presidential Memoranda.

Hon. Senators, I have considered the issues raised and I wish to give the following guidance-

- i) On whether the President can participate in law making, I wish to state that Article 115 of the Constitution gives the President a legislative mandate of Assent and Referral of Bills. Thus the veto power is rightfully exercised by the President. This has always been the case even in the repealed Constitution.

This answers to the matter raised making reference to the former Constitution in force immediately before the coming into force of the current Constitution. Section 46(4) of the repealed Constitution stated as follows-

“Where the President refuses to assent to a Bill he shall, within fourteen days of the refusal, submit a memorandum to the Speaker

indicating the specific provisions of the Bill which in his opinion should be reconsidered by the National Assembly, including his recommendation for amendments.”

- ii) On whether the President can introduce new clauses in the Memoranda, I wish to state that Article 115(1)(b) provides that the President shall-

"refer the Bill back to Parliament for reconsideration by Parliament, noting any reservations that the President has concerning the Bill".

This means that the President can only object to what is already in the Bill and in proposing how to deal with the reservations, he may propose amendments to the specific clauses, including such other consequential amendments in form of new clauses. Therefore, new clauses in place of those in the Bill can be proposed so long as they are within the scope of the Bill.

- iii) On whether the New Clauses have to follow all the legislative stages, I wish to state that at the stage of reservations, a Bill will have been passed by Parliament. By considering the Memorandum, Parliament is not re-opening debate on a Bill, but restricting itself to the “reservations”. In my view, the new clauses need not go through the entire legislative process of First, Second and Third Readings.

Arising from this and upon further reflection and given the fact that the Joint Committee appointed to consider the Memoranda failed to submit a report, I now direct that the Memoranda on the two Bills be placed in the Order Paper for Thursday, 29th October, 2015, for consideration in Committee of the Whole.

As has been the practice, at the Committee Stage, each proposal by the President will be considered and voted on independently. It is important to note that Senators may amend the President’s proposals, but will require the support of at least two-thirds of the delegations in line with Article 115(4)(b) of the Constitution.

I thank you.

What is it, Sen. Mutula Kilonzo Jnr.?

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, thank you for the directions that you have given. I may be wrong in my thinking, but I seek your guidance. In view of the communication that you have given and on the threshold that is required to either agree or refuse the reservation, I kindly request that you revise your direction for us to do this tomorrow until we can obtain the two-thirds because we do not even have the normal threshold. Although you said that the reservations on the Bills that go through to the President is part of legislation, the fact is that if we do not get the two-thirds, the reservations of the President will remain unchallenged and will become law seven days after tomorrow.

Mr. Speaker, Sir, this is a milestone in constitution making in this Republic and I will kindly request, with all humility, that you reconsider so that you get appropriate quorum. Otherwise, tomorrow will be the day when that memorandum will be passed for lack of quorum.

The Speaker (Hon. Ethuro): Sen. Mutula Kilonzo Jnr., I have a lot of sympathy for you and your thinking. Unfortunately, you are anticipating debate and lack of quorum. I cannot help you on that one. Let us wait until tomorrow so that you can make that case when the matter comes. As for now, I was just giving you the provisions as they are and perhaps the fact that you have not been able to raise the requisite quorum to pass things at

the Committee Stage. You remember I even ordered this yesterday, that this afternoon, Members must be present to do the same. The fact that Members have failed to do so, tomorrow may be an opportunity for them to learn a big lesson.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, I derive a lot of fun in legislation making. Although you have asked me to move this objection or seek directions tomorrow, since the Deputy Majority Leader who is responsible for the majority side is here, maybe, you should also issue a further direction to the Whips who are watching you, some of whom are in a meeting on the impeachment of the Governor for Murang'a, so that we do not get into the history books for having not passed a memorandum of His Excellency the President because we did not have quorum.

Thank you for your indulgence and understanding.

The Speaker (Hon. Ethuro): That is a fair request. I reiterate the direction I gave yesterday and appeal to the political leadership---

(Loud consultations)

Order Senators! I am responding to your issues. I am reiterating the directive I gave yesterday to the political leadership; the whips and to the general membership; that your business, first and foremost, is legislation and to be in this House. Even for that Committee that we formed today, they could have had lunch together and conducted elections. That was the understanding I had. So, for them to have postponed from lunch time to the afternoon is not acceptable.

Deputy Majority Leader, this is another opportunity for you to exercise leadership and mobilize your troops. Surmount whatever energy and stamina you have to make sure that we have all the numbers tomorrow. As far as I am concerned, that is only an appeal. I am not going to stop the business of this House on the basis of numbers. The numbers will impact the business, either way, and it is up to Members to know what that kind of impact means to them. Sen. Mutula Kilonzo Jnr. has raised one fundamental impact that Members can have. That is all we can do.

The next three orders involve division. Please ring the division bell for three minutes.

(The Division Bell was rung)

(Loud consultations)

The Speaker (Hon. Ethuro): Order Members. The three minutes are over and I suspect they must be even five by now. We still do not have the requisite number for the Division.

Sen. Keter: Mr. Speaker, Sir, since we do not have the requisite numbers to vote on these Bills, I would like to request that we defer them until tomorrow.

The Speaker (Hon. Ethuro): Order Members. It is a request to defer Order Nos. 8, 9, 10 and 11 to tomorrow. I agree to that particular request. It is ordered that they appear in tomorrow's Order Paper.

BILLS*Second Reading*

THE OFFICE OF THE COUNTY ATTORNEY BILL
(SENATE BILL NO. 37 OF 2014)

(Bill deferred)

COMMITTEE OF THE WHOLE

THE PUBLIC APPOINTMENTS (COUNTY ASSEMBLY APPROVAL) BILL
(SENATE BILL NO. 20 OF 2014)

THE COUNTY EARLY CHILDHOOD EDUCATION BILL,
(SENATE BILL NO. 32 OF 2014)

THE UNIVERSITIES (AMENDMENT) BILL (SENATE BILL
No. 31 OF 2014)

(Bills Deferred)

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, when the House adjourned yesterday, we were debating Sen. Musila's Bill on the amendment of the National Examinations Council Act. We did not conclude the debate. I was supposed to be the last to speak. When they switched on the red light, I mistakenly thought that my time was up but the Chair advised me that I still had 20 minutes remaining and told me I will continue today.

Sen. Musila is present, currently attending a committee meeting and he has not been called to reply either. There were Members who were willing to contribute to it. I am surprised to find that it is not in the Order Paper and when I consulted the Clerk-at-the-Table, I was told it had been concluded. It had not. I am here this afternoon to continue with my contribution.

*(The Speaker (Hon. Ethuro) consulted with
the Clerk-at-the-Table)*

Sen. Hargura has told me that Sen. Musila had not anticipated being here today. I am told he requested that the debate on the Bill be scheduled to Tuesday. He did not tell me because I was on the Floor. I did not know that, that was the situation. However, he is not here today because of the County of Murang'a matter. That is why he cancelled the visit to his county. I now understand why it is not on the Order Paper. I hope it will be there on Tuesday so that we carry on.

The Speaker (Hon. Ethuro): We still have tomorrow. Will Sen. Musila be present tomorrow?

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, he will be here tomorrow. He was only away today.

The Speaker (Hon. Ethuro): Then I direct that we have it tomorrow so that we conclude the matter. It is quite topical. I am glad that the matter has been resolved. There was a request for the matter to come up on Tuesday but on the assumption that Sen. Musila will be there tomorrow, the matter should be scheduled for tomorrow.

Next Order!

Second Reading

THE COUNTY GOVERNMENTS DISASTER MANAGEMENT
BILL (SENATE BILL NO. 40 OF 2014)

Sen. Haji: Mr. Speaker, Sir, I beg to move that The County Governments Disaster Management Bill (Senate Bill No.40 of 2014) be read a Second Time.

Thank you very much Mr. Speaker, Sir. The principle purpose of this Bill is to provide a uniform legislation framework for effective and comprehensive disaster management by the county governments. The Bill delegates the legislation making powers to the county governments for the purpose of the objectives set out in the enabling provisions. The Bill does not limit fundamental rights and freedoms.

Under Paragraph 12 of Part 2 of the Fourth Schedule of the Constitution, disaster management within the counties is the function of the county governments. The principle purpose of the Bill is to provide uniform legislation to regulate the exercise of this function of disaster management by the county governments. In this regard, the Bill establishes the County Disaster Management Advisory Board for each county.

The county authority has power to lay down the county disaster management policy and it also has the authority to take all measures necessary or expedient for the purpose of disaster management in the county.

Mr. Speaker, Sir, the Bill concerns county governments in terms of Article 110(1) (a) of the Constitution and it contains provisions affecting the functions and powers of the county governments as set out in the Fourth Schedule to the Constitution.

The Bill is not a Money Bill within the meaning of Article 114 of the Constitution. Clause 23 of the Bill specifically removes the Bill from the ambit of the matters listed under Article 114 of the Constitution. Clause 23 further provides that any expenses that may be occasioned by the implementation of the Act are to be provided by grants or donations as may be given or from such monies as the respective county assemblies may in the future provide for payment of such expenses. Further, the Bill provides that a fund may be established for the purpose of the custody of this Fund.

Further, the Bill provides that a Fund may be established for the purpose of the custody of these funds. The Bill does not, therefore, appropriate funds for the implementation of the Act. Any appropriation will be effected through separate legislation which will be introduced and effected in terms of Article 1(4) of the Constitution.

The idea of having the County Disaster Management Bill is to make it easy for the counties to act whenever there is a disaster which will necessitate them to help the

people instead of depending only on the national Government, which at times may not be as quick, as if this county government law was in place.

We are of the view that this is a worthwhile Bill. We are hearing now that the central Government is preparing to assist people during the predicted *El Nino* rains. With this Bill, it will be very easy for the county government to fast track and issue necessary measures that will enable them to set aside some money to defray any expenses incurred through loss or damage of property or life in their counties.

Mr. Speaker, Sir, I beg to move and request Sen. Wamatangi to second.

Sen. Wamatangi: Mr. Speaker, Sir, I rise to second. From the onset, I want to congratulate Sen. Haji; first, on the concept itself and the acknowledgement that our counties require to have the authority and autonomy to manage and deal with disasters which occur locally.

For a long time, when disasters have occurred in the counties, the response and management has been left, most of the time, to the national Government. For instance, we have had floods in Budalangi, landslides in Kiambu, Elgeyo-Marakwet and Nandi counties, droughts wiping out herds of animals and leaving populations impoverished, outbreaks of diseases like Cholera, terrorist attacks like we saw in Garissa, Nairobi and Mombasa counties.

The management and the onus of dealing with such matters of urgency are left to systems and operations which are based in Nairobi, in spite of the fact that these disasters occur in the counties.

When Garissa University was attacked by terrorists, the entire machinery of Garissa County Government, including the Governor, were turned into spectators. Deaths of young innocent students occurred because help was not forthcoming, until forces arrived from Nairobi.

The purpose of this Bill is to address those kinds of ills, maladies and shortcomings. In future, we can ensure that our county governments as spread across the country have got, not only the authority, but have been allowed and facilitated to set aside a kitty with a legislative framework that can allow them to tackle those disasters. As the saying goes, "if one fails to plan, then he or she plans to fail".

Our county governors should be aware that, as the Senate and as we are empowered by Article 96, this House has gone out of its way in all aspects to empower the populations that elected us. It is the onus of our governors and the administrations at the county level to ensure that these responsibilities that we are taking to them are exercised properly and responsibly.

On the issue of use of funds, this Bill seeks to set up an authority which will be empowered to come up with policies and a formula as to how funds will be availed to the people. One of the issues which have always emerged is how funds are utilised in the counties.

The leaders of the counties should know that the establishment of this Authority and the legislative power we will give them via this Bill - to set aside funds - is not and should not be another cash cow for them. They should also not entrench corruption by setting aside funds that can be used at will on the pretext that they are tackling the issues that afflict the societies and the people at the county level.

Many of our people have lost their lives, means of livelihoods and great future just because we were unprepared. I support Sen. Haji and our county governments and

the work that we are doing in this Senate to ensure that we have a better country. We as Senators will ensure that the dream of devolution is realised. We want every Kenyan to feel as equal as possible with any other Kenyan in any part of our landscape.

I support.

(Question proposed)

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, this Bill has been developed and we must salute the research arm of your office and the Senate, which evolved the idea and brought it to our Committee that is chaired by the distinguished Senator for Garissa. We have gone through this Bill many times. It makes provision to devolve disaster management.

In the history of the country, we have had one disaster upon another. Whenever this happens, the whole country is at a loss as to where emergency responses should come from. For example, during the Westgate terror attack, we saw competition between the County Government of Nairobi and the national Government; the army competing with the police and everybody else wanting to be part of the action. They ended up doing very little.

In fact, in the case of Westgate, we are told the process of busting the terrorists caused more harm than good. The army just went there and bombed the mall when, in fact, the Recce Squad, an arm of the General Service Unit (GSU) was closing in on them. In the process, we lost many lives. That kind of bravado comes in the absence of an enabling law for such management.

Mr. Deputy Speaker, Sir, we are also oblivious of the fact that there are many disaster prone areas in this country where you can predict with precision and not these fraudulent predictions about the *El Nino* that never comes and money is being expended left, right and centre. We were told that *El Nino* will start on 7th October, 2015. We are now at the end of October and every day, there are all manner of warnings over the radio that when the rains come, do not walk on water, do not do this and that. We have disaster prone areas like Budalang'i in Busia County and Nyando in Kano Plains, where there is a cycle of flooding every year. The disaster of drought in Kenya is an annual cycle. There are times when some parts of this country go for one to two years without a drop of rain. They need attention and we cannot count on the centralized system of Nairobi being the response centre for disasters.

The previous governments of *Mzee* Moi and *Mzee* Kibaki had actually put in place the Directorate of Arid and Semi-Arid Lands in the former Ministry of State for Special Programmes. They continuously monitored where there is famine, lack of water, floods or mudslides; like what we had at Khuvasali in Kakamega and at one time there was a big one in Murang'a County. The responses have been *ad hoc*, disjointed and inadequate.

Mr. Deputy Speaker, Sir, we are now trying to decentralize and obligate every county, because every county is likely to encounter one form of disaster or another. It could be excess rain or some counties are prone to lightning strikes which kill school children. There are counties that once in a while you just have – like the western part of Kenya where I come from and the distinguished colleague here was our Provincial Commissioner (PC) there – a disaster strikes and an epidemic sweeps through the entire

region killing all the poultry. You know what chicken means to my community. When you have your entire poultry brood wiped out, then it is a disaster that needs a response.

There are times when people have eaten animal meat infested with anthrax and you know how dangerous and deadly anthrax is. We have had disasters where people drink alcohol like what happened in Mai Mahiu, Nandi, Machakos, where some people lost their eyesight or died. Those are disasters. There was a disaster in Busia where children were injected – I do not know if they were unqualified persons – and became disabled. Yesterday you saw on television a whole village in Trans-Nzoia County has a disaster befalling them because they took milk that appeared to have been contaminated.

So, all these different facets of disasters need to be managed properly. Like the distinguished Senator for Kiambu said, our colleagues in county governments; governors, have given devolution a bad name. They are unaccountable in many ways, not transparent and corruption is the order of the day. That is why in setting up the Disaster Management Board, we have said that whoever is appointed, apart from the governor himself or herself and one of his or her ministers, they must be approved by the county assemblies.

I hope county assemblies will be custodians of public good and ensure that the people appointed to this Board have the technical know-how, passion for the job and the interest of the disadvantaged people at heart. This is because sometimes we set up these organizations and we do is just create a gravy train. People will be appointed because they are getting jobs and not because there is something positive to humanity to do.

Mr. Deputy Speaker, Sir, there is something that has not been included. I have asked the Chairperson of the Committee to look at it and our Committee should really look at this at Committee Stage. This is the source of funding for the Disaster Management Committees at the counties. Currently, we know that the bulk of the budget remains with the national Government which has a duty to manage, control and mitigate disasters. I would want to see in this law, a provision that while county governments will budget some nominal funds for disaster management, the bulk of the cost of managing disasters in counties must be reimbursed as conditional grants from the national Government.

If you count the national Budget like the Kshs1.2 trillion for this year and you have Kshs289 billion going to the counties, it simply means that out of the national Budget, only nine per cent has gone to the counties. You have left at the national level 91 per cent of the national Budget, segmented in various departments and responsible execution areas but it remains a kitty at the centre.

I would want to see a situation where the national Government budgets for national disaster preparedness mitigation and management, and the executing agent is the county government, like what happens in the United States of America (USA). When there was Hurricane Katrina in the devastated New Orleans and many parts of Texas, the national Government moved in the army and resources to support the work being done by the Texas State Government.

An army that can move in to mitigate, for example, where you have a massive disaster like the bombing of the American Embassy or Westgate and what has been going on in Garissa, even if we say it is the county government and its board that will deal with it, they have no capacity. We cannot possibly station a military garrison in every county.

Mr. Deputy Speaker, Sir, we need to have it in this law, an obligation to the national Government, that upon a request or a disaster occurrence, the national Government must be ready to send support mechanisms including personnel, resources, materials and whatever is required to county governments. Let the national Government then partner with the County Disaster Management Authority to mitigate and help the affected citizens. Even where a calamity has befallen pastoralist communities – like where our distinguished colleague who has moved the Bill comes from – if there is a calamity where drought wipes out their livestock, then the national Government must avail funds and partner with the Garissa, Wajir or whichever county government and help farmers restock.

Some of us who come from well-watered areas may think that keeping livestock is a luxury. To many parts of this country, livestock is the alpha and omega of people's lives. In many parts of this country, livestock is the means of livelihood. You cannot do anything if you do not have livestock. Most people have no farms and for those who have, they cannot farm because there is no rain. They live on milk, meat and sometimes draining blood from the animals which is done in other areas as well for food.

Therefore, lack of livestock is not just a question of poverty and deprivation but a question of deprivation of total life support mechanism for people in Arid and Semi-Arid Lands (ASALs).

The national Government will and must be obligated by the law. If the County Government of Garissa, in Ijara or whichever division, detects that people have lost their livestock en masse, then, it should collaborate and cooperate with the national Government to buy livestock, restock and provide mechanisms of hay, water bowsers and some of the support facilities for people to survive.

We want funds to be available in good quantities. At Committee Stage, we may have to see whether we can propose that a percentage of the national Budget, like we have done with the Constituencies Development Fund (CDF), should be put in the National Disaster Management kitty.

As you know, a country that cannot feed itself and manage its emergencies is a country headed in the wrong direction. *Wafadhili*, as they are commonly referred to, can come in. However, they only come in to help you on what you are already doing. We cannot have floods in Budalangi and say that Americans will come in and help us to evacuate those who are affected or Americans will come in and restock livestock in Ijara or Turkana. We must start and let our friends, well-wishers and donors, help to boost what we are already doing.

Mr. Deputy Speaker, Sir, we need to have a percentage of the Budget set aside for disaster management and preparedness. Where no disasters fall, then, the money should be reverted to the Treasury for the following year's financial cycle. We do not want a situation where – on a prediction that is suspect and unbelievable such as *El Niño* – we go public and say that we have a budget of Kshs30 billion for *El Niño* and the money is being spent.

If what we have been seeing is true, then, this country needs divine intervention. How on earth can you contenance a fact that a bar of soap that costs Kshs150 over the counter in any kiosk is being procured at Kshs37,500? How on earth can you contenance the fact that a pack of sanitary towels for women and girls that costs Kshs150 are being procured at Kshs7,500? This is the problem that this country is facing. We have lost

direction and sense of value for money. People in positions of responsibility have run away with the country.

Mr. Deputy Speaker, Sir, you saw the case of wheelbarrows in Bungoma County. I sat here in horror listening to the case of Murang'a. I do not want to pre-empt debate. However, how do you escalate a budget from Kshs7 million to Kshs240 million, if that is true? These are not people who should be walking and breathing fresh air. They are people who should be in jail.

Rev. Njoya was nearly killed outside this Parliament by a man called Likhotio while fighting for the freedom for devolution. Now, it is like the proverbial case of homeguards versus freedom fighters. Those who are ensconced in palatial places have wheeled their way into positions of leadership in counties and they are doing things that given the right opportunity, some of them would be hanged at Uhuru Park.

Mr. Deputy Speaker, Sir, I had a case in my own county where we arrested a procurement process. My sister, Sen. Mugo, who has been the Minister for Health, would be horrified to hear the issue of orthopedic Intensive Care Unit (ICU) beds. I have done my research in MP Shah and every other hospital. The Germany technology Hi-tech ICU bed costs an average of Kshs5 million. Do you know what was happening in my county? Five beds were being procured for the ICU. First of all, we have no ICU in my county. Therefore, they were buying ICU beds where there is no ICU. Beds that would cost a maximum of Kshs25 million were being procured for Kshs175 million. You cannot believe, yet this is happening almost in every county.

When we start looking at disaster management, we must also with the hindsight of experience we have now gathered see the largesse; the outright looting that goes on in counties. People who hardly had a second car are now driving convoys of 20 Toyota Prados with sirens. Even our President does not drive in a convoy of 20 Toyota Prados. Demi-gods have been created using public funds. The roads are impassable yet those responsible live like kings.

Today, the health sector is part of our disaster in the country. The national Government must sit with county governments and make a decision on what we should do on health matters. We have suggested many times that while the Constitution rightly says that the national Government is responsible for referral hospitals, it does not limit the national Government from creating a referral hospital in every county. Therefore, the national Government must have a referral hospital – what we used to call Level Four or Level Five hospitals – in Murang'a, Garissa, Mandera and everywhere in the country. That way, we will have the active presence of the national Government in health matters in every county. Then, the constitutional structure does not have to be changed but it should remain the same. Health remains devolved.

The Constitution says that the national Government is responsible for referral hospitals. Who said that referral hospitals in this country will only be Kenyatta National Hospital (KNH), Moi Teaching and Referral Hospital in Eldoret, Mathare Mental Hospital, Port Rietz for communicable disease and Tuberculosis (TB) and the Spinal Injury Hospital? We need to spread out. Sen. Haji and Sen. Mugo, the two Senators in front of me, can tell you that during the Kibaki Government, we had voted in the Cabinet to create 21 additional referral hospitals towards the end of the Kibaki regime. That has been shelved and nobody talks about it.

However, now we have counties to create equity because this is now a country of equality and equity. Counties, for example, Nairobi with a huge population of over six million people should have a minimum of three or four referral hospitals apart from Kenyatta National Hospital. Then counties that are proximate to Nairobi, for example, Kiambu can have two referral hospitals. Otherwise, if you go to the countryside today, people are dying of very preventable diseases. A disaster has befallen on us. Even the passage of this Bill without attendant proper funding and coordination may not avert the disaster that is health.

Mr. Deputy Speaker, Sir, schools are another disaster staring at us. Education is not devolved except Early Childhood Development Education (ECDEs). In the countryside, primary schools are still dilapidated. In fact, if the Government had its priorities right - while it is important to connect electricity to every school, I would urge them to see to it that physical facilities – what is the point of connecting electricity to a school with 1,000 children, with two classrooms while the rest are learning under trees? Give them physical facilities.

Let a child who goes to Class One see the difference between staying at home and wallowing in dust from morning to evening, from going to school to sit on a desk. During the time you went to school, and I was closely behind you, in Standards One, Two and Three you were taught in your mother tongue. In fact, it was called 3Ks; *Kusoma, Kuandika na Kuhesabu*. Then when you got to Standard Four, you graduated to a level where you were given an ink pot, an ink pen and a book to write on. The Government used to do this. Today, the parent must buy a pencil, a rubber, an exercise book and so on.

Mr. Deputy Speaker, Sir, a huge population is stuck in either ignorance or poverty which is a form of disaster for the country. If Cuba and many other countries can do it, we can do it even better. I want to see that this good law helps the counties. I am not quite sure that we should put a clause to deal with thieves. I would like to urge the Chairman, at Committee Stage, to come up with very stringent law; people who steal and misappropriate funds meant for disaster must be dealt with.

You saw the case of Internally Displaced Persons (IDPs); people have paid themselves and converted themselves into IDPs with state funds. For instance, in the Mau Settlement Scheme, the rich have gone and taken land. There are settlements in Trans Nzoia - if you look at the list which was brought to the Table here; District Officers (DOs) and their relatives have become landless all of a sudden. They are the ones taking land meant for poor people.

Mr. Deputy Speaker, Sir, when we put up a fund to help the disadvantaged, we must make it very painful for a person with capacity and ability to pretend that they can benefit from that Fund. What they normally do is that as soon as there is a problem, they set up a committee. It is not a committee to do anything. Somebody has come up ingeniously that these days an A.I.E is called Authority to Initiate Eating. This is what they do; they just come together and initiate eating. They have endless meetings while people are suffering.

In those meetings, everybody comes and goes home with allowances. They are picked in cars and brought back. When they talk about something, they say; let us postpone this to tomorrow because there is an allowance. We must make it difficult for people to live on the sweat of others because when we vote funds to go and help mitigate

disaster, it is meant to help the poor of this country or those who are disadvantaged; the poor of Kibera, Mukuru kwa Njenga and anywhere else in this country.

I, therefore, urge Sen. Haji that our Committee must make it very painful for persons in authority and responsibility turning themselves into victims and walking away with funds meant to help the disadvantaged. It is the only way we can do this.

Mr. Deputy Speaker, Sir, I have seen it happen. Sen. Haji has been a Provincial Commissioner (PC) and I know he was a very upright PC because he worked in my region but as soon there is a problem, it is the best time for administrators. It is an early Christmas for them. When there is a problem, you will see how happy they look. All of them get into committee upon committee; everyone has got a writing pad and a pen basically calculating what they will walk away with instead of helping people. This must be brought to an end. That is why in this country – you come from a region where you can also see this – the richest and wealthiest men and women in this country are people who have worked in the Government and not people who have been sweating out there.

A person works in Government, sits there, the budget comes and he knows what to freight away. They have now found their ways into offices of governors and they are wreaking havoc.

In my county, the ordinary service of a four wheel drive Toyota Prado which you probably own and which these Senators own - if you take it to any garage even if it is Toyota Kenya, to change oil and the oil filter, it cannot be more than Kshs20,000, yet my county is servicing Toyota Prados at Kshs500,000 for an ordinary service. I am sure this is happening elsewhere. You saw a county that set up a website that we set up for free at Kshs2.5 million.

Another one installed curtains in some office at a cost amounting to millions. There is a laughable one in Nandi where they just put up a steel beam and a crossbar written “you are now entering Nandi County.” It cannot cost Kshs400,000 yet it cost Ksh27 million; just a steel beam like a rail rod and a cross bar written “you are now entering Nandi County; Kshs27 million gone.

Everywhere you go you see; for example, “you are now entering Murang’a County” and so on. It is all theft. You do not have to put up those signs for people to know. We are a unitary state. We do not need those signs that you are now entering Garissa; Garissa is part of Kenya. You do not need those signs anywhere. They are being used to steal.

Mr. Deputy Speaker, Sir, in addition, if you go to a county you will see billboards everywhere with a portrait of a governor using public funds; money that would help poor people. We must fight this. We can talk until the chickens come home to roost. We want to see that even the little money that we are painstakingly fighting with the national Government to take to the counties, is put to good use, not to line the pockets of people.

For example, a person who, before devolution took effect, could not give Kshs5,000 in a *Harambee* is now giving a million shillings every weekend. Where do they get this money? When you look at them, the Intelligence Quotient (IQ) is less than that of an ordinary Kenyan. It is disaster upon disaster.

I want to say that the seed money for setting up disaster preparedness in the counties - Sen. Yusuf Haji can do this as well- should be given from the national Budget as a conditional grant to every county, so that each county has a mechanism and a system of disaster preparedness, to be called upon any time to respond. There are some disasters

in some counties that are just unhygienic. The jiggers in your own county and many other places, you go there and find children walking with their legs feeble. That is negligence and now it has become a disaster.

Mr. Deputy Speaker, Sir, the other day we were short of declaring alcohol abuse a national disaster. How do we control reckless consumption of alcohol that has rendered people helpless? This has made even procreation difficult in certain parts of this country because men have drunk themselves silly, they cannot even sleep with their wives. We were told in the last Parliament by a distinguished lady from Nyeri that in her area, when a man comes home in the evening and the wife says, "darling welcome", he runs under the bed until morning, drunk and helpless. That is a disaster that we need to address. Very soon we should declare land grabbing a disaster.

Mr. Deputy Speaker, Sir, I want to leave room for others to contribute. This Bill is excellent and I think our Committee needs to do a little more. In fact, I was going to ask the distinguished Chair of the Committee that before we get to the Committee Stage, we could even have a *kamukunji* and get input from many Members. You can see how few we are this afternoon. We are not setting up a County Disaster Management Authority as an eating avenue for any governor. We are setting up an Authority to help mitigate, prevent and assist victims of disaster.

I beg to support.

Sen. Karaba: Thank you very much, Mr. Deputy Speaker, Sir, for giving me the chance to contribute in support of this Bill. There are times when we blame nature when we are the ones to blame. Sometimes we blame the Government when it is us who should be blamed. For this matter, I am trying to refer to this Bill which is coming at a time when we are told that there is going to be *El Nino* and most of the county governments have already collected money from sources that we are not very convinced that the money is worth to be spent on the *El Nino* menace.

Mr. Deputy Speaker, Sir, you will be surprised to realize that the money will not even be spent for the purpose intended. That is to combat the menace arising from the *El Nino* weather phenomenon. Times come when our meteorological department itself is to be challenged because of giving us contradicting information about weather forecasts. There are times when we are faced with disasters of heavy rainfall even when the meteorological department has not said anything about it.

If this was happening in other developed countries like Europe or America, weather forecasters would have been held responsible for the damages caused to farmers or even to people when false information is given with regard to weather. This is something that is entailed in the Disaster Management Bill, and we need to know how to take care of our disasters once we come across them.

I will also give an example of a river called Tennessee in America. This river used to flood in the Appalachian Mountain on the eastern slopes of America, and little was known about what was going to happen by the people living in the lowlands of Alabama. In Alabama, even when it was not expected, floods would come, carrying stones, boulders and rocks, and would flood the whole area; the low lying Alabama State. That is the reason why even cotton farming in the Southern State of Alabama had to shift to the west, because of further introduction and multiplication of the boll weevil which became a disaster due to unnecessary river floods arising from heavy rainfall on the Appalachian Mountain, along the River Tennessee and then all the way up to Alabama.

Mr. Deputy Speaker, Sir, even in our country, what we are facing is sporadic weather forecasting. Sometimes, you find that the weathermen will not forecast correctly, they will tell you that it will be rainy in the morning and scattered showers and clouds cast in the mountains and so forth, giving us a lot of stories. However, we are dismayed when we come in the morning; you find out that the weather is fine.

There are times the same weather men will tell us that we need not plant because the rains will be short and farmers have to go by that advise only to find that the rains will fall, well distributed and enough for crops to grow. When a contradiction of this nature comes, and this contradiction is related to weather, in the end, it is the farmer who will lose. It means that even with regard to the food security aspect, we will lose a lot of money just because of one man's pronouncement, called, a weather forecaster.

Mr. Deputy Speaker, Sir, you go to places like Europe, when they say that there will be showers at noon, there will be showers that noon. When they say that there will be hailstones at 4.00 p.m., check your watch at 4.00 p.m., and there will be hailstones. So, here, we never get that exactness of the weather forecasting. That is why we need to manage these things because there are a times when the weather men might make very serious errors, and we are wondering whether this Bill cannot even capture an amendment to say that once weathermen make mistakes, they should have insured farmers so that the farmers are paid the damages caused by the changes of weather more so, in the tea growing areas.

Mr. Deputy Speaker, Sir, I am aware that you also come from the tea growing regions where in the morning you might find all the tea destroyed by hailstones. This is what we are saying that the counties must take care of such weathermen mismanaging the counties. This is why we need to think about insuring farmers from as far as Trans Nzoia where they grow maize, even in areas like the lakes where they fish because the weather forecast could be saying that there will be no rainfall only for the fishermen to go and find that the whole lake is stormy and they find themselves capsizing in the lake, and they lose their lives. We will behave that way because of the forecast of a weather person in the weather station.

Mr. Deputy Speaker, Sir, the spirit which is captured in this Bill is very important. It is imperative that we have to think about it. It is important that we have to take care of our farmers and our population because without management of the weather, it is disastrous. This is what the Bill is looking into.

We have to note that about 12 to 15 per cent of Kenya's land is arable. The other 85 per cent is arid or semi arid. If there is good weather forecasting, farmers would be told that in the next three or four months, their areas would face drought. Therefore, if a farmer had many animals, he would start destocking. However, this is missing in our weather forecasting stations. It is important for counties to manage this information. This kind of function should be devolved so that every county has its weather station to predict when there would be long or short rainfall. They can persuade people living in the low lands to move to higher areas. This can only be done if correct weather information is given by the weather forecasters.

Mr. Deputy Speaker, Sir, this is not happening over 50 years after Independence. We need to have concrete information from our metrological station in Dagoretti. We should have substations which will inform the neighbouring areas about the weather

changes and disasters associated so that we do not lose life as we have been doing in the past, particularly through landslides.

In the past, we have seen landslides destroy villages in lowlands in Kisii because they do not have information. However, if information would reach them in time, I am sure that the land slides, mud flows and sludges would be a thing of the past as people would be more careful than before.

Mr. Deputy Speaker, Sir, forest fires should also be detected in time because it is a weather phenomenon. Therefore, when forest fires arise in the grasslands; Kapiti Plains, Serengeti and in the national parks like Tsavo, it destroys our flora and fauna and the damage caused is heavy on the tourism industry. What this Bill is trying to address is that if such management is done well, we would save our animals and vegetation.

It is important to also note that when constructing buildings, houses, villages, estates and institutions of higher learning, we need to have structural management of the buildings so that we are in conformity with the weather. If a place is too hot, we do not need to have solid blocks. We also need to prevent earthquakes and earth tremors which are associated with the County Governments Disaster Management Bill. This will foresee any problem that might come along. When that is done, we will have buildings which conform with this Bill and have buildings that are very solid in areas that are earthquake and earth tremor prone.

Mr. Deputy Speaker, Sir, I, therefore, encourage the Mover of this Bill to make sure that necessary amendments are brought on board before we vote. These are very crucial contributions we are making here and once this Bill is assented to, it will help in construction of buildings that can absorb earthquakes, earth tremors, other weather phenomenal changes and forest fires.

As motorists, we need to know weather conditions while on the road so as to know when the rivers will be swollen and avoid crossing them. We also need to know when the oasis will contain water in the arid areas and when to destock our animals because we are aware of that with proper weather management. It is possible to forecast and say that in the coming two or three months, it will be dry so the hunters and pastoralists will need to destock.

It will also be important to note how planning can be done in dry areas because boarding schools can be constructed in such areas. This is because the environment cannot have any other type of school because of the migratory nature of people there. That is what is happening in northern Nigeria; you find that in northern Nigeria, the pastoralists of the Fulani community move with their animals. As they move, they get classes that are make shift which are known as nomadic schools which are recognized by the Government of Nigeria. That should also be allowed here so that we manage the environment.

I beg to support the Bill and hope that the other Senators will see the need to support it. It is important for us to understand our own environment and care for it.

Sen. (Prof.) Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, I rise to support this Bill and thank my friend Sen. Haji, with whom I get into problems every now and again, for bringing such a wonderful Bill.

I have always said in this House that we are here to ensure that proper laws are made in line with the Constitution. The Fourth Schedule of the Constitution assigns a lot

of functions and responsibilities to both the national Government and the county governments.

I must congratulate Sen. Haji and his team recognizing that under Part 2 of the Fourth Schedule, the issue of disaster management is assigned to the counties. Whereas the Constitution lays down the general principles regarding these responsibilities to the county and national Government, it is the National Assembly, with regard to the national Government and the Senate with regard to the counties, that must translate the general principles and provisions in the Constitution into concrete laws and regulations that may make it possible for county governments to work properly.

Therefore, I would like to congratulate the team for having picked this responsibility. I believe that there are many other Bills that should ensue from the Senate in line with implementing the principles and statements in the Constitution.

Secondly, I am glad that the Bill says clearly that this is not a Money Bill in line with Article 114 of the Constitution and proceeds further to specify how the County Disaster Management Authority shall be financed by the county. It is important that all counties should budget properly for the financing of disaster management and that it is not left to some *ad hoc* and haphazard ways of dealing with disaster. At the moment, most disasters are dealt with in county governments under special programmes which quiet often, are meant to be *ad hoc* expenditures by the county governments quite often not budgeted for before time. Therefore, the resources raised are either misused without proper regulations or prove to be inadequate to meet the disaster management programmes that they are meant to finance.

It is a very important gap in the administration of county governments, with regard to disaster management. I would like to add, along with what is called Special Programmes---. I am glad that in the present Jubilee Government there is no Ministry called Special Programmes, although the Ministry of Devolution and Planning seems to have taken that mandate without being called so. I think the portfolio of Special Programmes should be used very sparingly because it can easily lead to spending monies that are not budgeted for. Eventually, that will hurt the Government expenditure as a whole and create imbalances.

This Bill definitely makes it possible for disaster to be treated in a proper way and under proper regulations governed by the law. The other issue I wanted to raise is the issue of disaster. What qualifies as disaster? This is something that must be properly interrogated. Under preliminary Part 1 of the Bill, it is said that disaster means a catastrophe, a mishap, calamity or grave occurrence in an affected area, arising from a natural man-made cause and which results in substantial lose of life human suffering, damage to or destruction to property or damage to or degradation of the environment and is of such nature or magnitude as to be beyond coping capacity of the community in the affected areas.

Mr. Deputy Speaker Sir, I think, I would like the Committee to consider in the definition of disaster, apart from catastrophe, mishap, calamity and grave occurrence and so on. There is something which I want to call major accidents. We have seen those major accidents in this country when oil tankers overturn and as fate would have it, people rush to fetch oil. Somebody smoking a cigarette may cause a disaster.

I remember when I was Minister for Medical Services, I did witness two such major disasters. Disasters are very expensive to deal with because in the final analysis,

you may have to deal with people who have 80 and above, degree burns. These are people who need special treatment. Such disasters may be way beyond the capacity of a county government to deal with.

I have not paid attention to provisions in the Bill to that effect. However I would like to appeal to my friend, Sen. Haji, that, I was trying to go through it carefully to see whether this is catered for, but in the event that it is not, then it should be looked at.

I know that in Part (iii), there are measures for disaster management Clause 15(3) reads:-

“Each county government shall submit the county plan prepared under sub-clause (2) to the relevant county authority for approval.”

Further, it provides under sub-clause (4) that:-

“Each county plan shall include a statement on the vulnerability of different parts of the county to different forms of disaster.”

In the case of my county, it could easily be that the areas which are prone to flooding, for example, it is an obvious case in the Kano Plains and the others. Then there are the measures to be adopted for prevention and mitigation and disasters in case of floods that are known, the manner in which the measures shall be integrated with the development plans, the capacity building and preparedness measure to be taken disasters that a county like Kisumu can deal, with like floods.

When it comes to major accidents, having capacity building to deal with that kind of disaster is out of this world, because the casualties that occur like people who are burnt excessively need attention. In our case, when it occurred under the Coalition Government we had to fly people to Israel and India.

Somewhere in the Bill, we need to pay attention to major accidents and see how within the disaster management framework in the county, it can be dealt with or whether we want to bring in the national Government in such instances to come to the aid of the county, so that when a major accident occurs, the Rapid Response Unit of the national Government and of the county governments can work together to make sure that action is taken in the quickest time possible so that we do not lose human life or even cause more disaster to happen.

The issue of disaster management is defined as a means, a continuous and integrated process of planning, organizing, coordinating and implementing measures that are necessary, or expedite for

- (a) Prevention management disaster, mitigation reduction of the risk of any disaster or severity, capacity building and so on.

In Clause 31 of the Bill, there is a point that I want to raise to the attention of the Mover of the Bill, Sen. Haji.

It states:-

“A person who does not comply with or contravenes an order or directive made under Section 35 commits an offence and is liable on conviction to a fine not exceeding Kshs million.”

Mr. Deputy Speaker, Sir, I have a case in New Runda in my brother in-law's place, who went to work and came back then found that his whole fence had been reduced to nothing by the County Government of Nairobi. Why? Because the County Government of Nairobi decides that along that fence - between my brother in-laws' house here in Runda and his neighbour - it was going to build a trench to manage *El Nino*.

Mr. Deputy Speaker Sir, it takes years to plant a Kay-apple fence to its maturity, so that if you are living in your house you can feel secure. To come home and find your fence reduced to nothing without any warning or notice that they are digging a trench for the preparation of *El Nino*, it is infringement of private property. The English men once said that "an English man's home was once called his castle," in other words, that is where the English man finds most security. I would believe that here in Nairobi and anywhere in Kenya, somebody's home is his or her castle. That is where you find most security.

If in the spirit or in the policy of trying to be prepared for a disaster any government, county or otherwise can come and destroy somebody's fence without any pre-warning, without any preparation of the owner, that such a thing is going to happen, even after being approached and promising that they will put a temporary fence, they could not do so for days and days, such a person is liable for this kind of punishment.

In managing disaster, it does not mean that we do away with the Bill of Rights, nor do we do away with the sanctity of private property. This Bill must also look to what extent disaster management is going to be an excuse for infringing on private property or Bill of Rights.

When I talked to my sister she declined going to court and said that court cases are very expensive and take a long time while we need an immediate solution. I then called City Hall and told them what was happening. A person was dispatched there and I was promised that there was going to be a temporary fence of *mabati* erected there. Three days later, nothing like that had occurred. What is worse is that there is a huge tractor there; a bulldozer was there to dig the hole, hired by the county government for Kshs14,000 a day and on Monday it stood there for the whole day doing nothing.

I know that the county government is going to be billed Kshs14,000 by that fellow. In my estimation, that job would have taken less than a week and apparently it is going to take two weeks. If they did not work on Monday, then it means that they will take longer. There is also a possibility that in the spirit of disaster management, we are going to find a loop hole for people to guzzle money into their pockets, doing nothing, but pretending that they are managing disaster, as it is happening presently with *El Nino*.

Mr. Deputy Speaker, Sir, this idea of disaster management opening avenues of primitive accumulation and corruption in this country must be cured by a Bill like this one. We must deal with the possible mischief that we are creating an Authority in the county government which will be a conduit for corruption; a conduit for money to be used on things other than disasters.

I appeal to the Committee and the Mover of the Bill that somewhere in this Bill, there should be proper safeguards to prevent the possibility of a County Disaster Management Authority being used as an avenue for primitive accumulation or corruption as is happening in the case of *El Nino* in the County of Nairobi.

I hope that the Senate Committee, since this Senate looks after the affairs of the county governments, takes this issue of the implementation of *El Nino* programmes in this country. If what I saw in New Runda is the way *El Nino* programmes are being implemented in this county, we are in for disaster. Governor Evans Kidero should be made to know that citizens have a right under the Constitution to pursue their livelihoods under secure homes protected by private property without infringement---

The Deputy Speaker (Sen. Kembi-Gitura): Your time is up.

Sen. Kisasa: Asante Bw. Naibu Spika kwa nafasi hii. Ninampongeza Sen. Haji kwa huu Mswada wa Sheria. Mswada wenyewe umebobea kama mwenyewe. Hongera Sen. Haji. Ninatoa hisia zangu kuhusu mikasa ambayo inaweza kutupata. Wakati mwingine tunailaumu Serikali lakini kwa mfano pale kivukoni Likoni Ferry, kuna yale maboya ambayo yamewekwa kwenye ferry lakini hatujui kama yanafanya kazi. Ukiwa kwa ndege, unapata tangazo kwamba kuna boya chini ya kiti cha abiria lakini ni wangapi ambao wanaweza kulitumia kukitokea ajali?

Bw. Naibu Spika wa Muda, kuna wakati nilikuwa Budalangi na hakukuwa na mvua wala ishara yoyote ya kunyesha lakini vyombo vya habari vilisema kuna mvua nyingi na mafuriko Budalangi. Sheria kama hii itakomesha uwongo mwingi. Naomba Sen. Haji aazingatie mafunzo ya kuepuka majanga yanapotokea. La muhimu ni watu wajue vile wanaweza kujinasua kwenye janga. Pale kwa feri Likoni, ni wachache ambao wamejaribu kutumia boya. Je, yanafanya kazi? Ni wangapi wakirushiwa wana uwezo ya kuogelea?

Siwezi kulaumu sana wenzetu ambao walisema kungekuwa na *El Nino*. Waswahili wanasema kuwa, heri kunyesha ujue panapovuja. Je, tuko tayari? Mswada huu umekuwa wakati tunahitaji sana. Tunaomba pia Mwenyezi Mungu atujalie *El Nino* isitupate kabla hatujajiandaa. Je, ikitokea kwa kaunti moja, kaunti nyingine itatusaidia ama tutangoja mpaka usaidizi utoke Serikali kuu?

Ninaunga mkono Mswada huu. Ni lazima tujiandae. Sisi kama wananchi wa Kenya ni kawaida yetu janga likitokea siku mbili ama tatu, tunashughulikia sana lakini katika siku ya nne tunarudi tulipokuwa. Kwa mfano, jambo la dharura likitokea, tunapekuliwa hadi unashangaa kuna nini. Hapa nje ya Bunge kukiwa na jambo la dharura, ndipo utakuta polisi wakirekodi matukio kwenye vitabu, lakini baada ya siku mbili tunarudi kawaida. Ni kama tunachezea janga. Hatuyatii manaani kuwa ni lazima tuwe tayari wakati wowote kwa sababu janga linaweza kutokea na tusingoje mawingu.

Dalili ya mvua ni mawingu lakini wakati mwingine tunaweza kukosa. Tusiwe tu tunajihadhari wakati wa *El Nino* pekee. Kuna mikasa mingi ambayo ikitupata, hatuna uwezo kujizuia. *Tsunami* ikitokea eneo la Pwani tutashindwa kujisaidia. Kwa hivyo, lazima tuwe tumejiandaa. Mara nyingi Budalangi watu wanaposhawishiwa watoke kwenye sehemu zilizofurika, hawataki kutoka. Tumezoea tukae pale ili tusaidiwe. Tumejidharau hadi tunaona kiwango chetu kwa nchi ni cha nadhifu.

Bw. Naibu Spika, nimesema hapo awali kwamba heri kusinyeshe uone panapovuja, lakini saa zingine tunaomba inyeshe ili tujue panapovuja. Je, kabla ya kuvuja, paa letu tumelitengeneza namna gani?

Mwisho, ni kwamba lazima tujihadhari kabla ya hatari. Tukiona ambari, tujue zinduna yaja. Siku zote, dudu linalouma tusilipe kidole. Wale wasimamizi wa wa kaunti, pesa zisivujwe. Wakitia mifukoni na wananchi wanatarajia watumie kujinasua kwa mikasa, watu wetu wataangamia na nchi yetu itaangamia pia.

Shukran.

Sen. Musila: Thank you Mr. Deputy Speaker, Sir, for the opportunity to support this important Bill. In doing so, I commend my colleague Sen. Haji for this Bill.

This Bill is long overdue. It should have been enacted many years ago. It is a shame that 50 years since Independence, we are enacting a Bill to manage disasters. I say this because you are aware we have had many disasters before. The management of these disasters has left much to be desired.

Mr. Deputy Speaker, Sir, first of all, we have not taken measures to prevent disasters as the Bill proposes. Disasters can happen any time. They have been with us but we do not learn lessons. A good example is fires. In this city, we have seen much investment. For example, skyscrapers have been put up by investors. However, we are not ready for a fire disaster.

In 1956, I used to come to Nairobi City and passed through the most important buildings in the city. Believe you me, the fire station which is opposite the Nation Centre Building was one of the largest places I visited. To me, it was a huge place and I was told that it was for fire disasters. I know that people practiced from time to time and I used to watch their practice. They could jump and run to the trucks. The same things are not done nowadays. That is still the main fire station in Nairobi City which I saw in 1956.

We have heard, seen or read from the newspapers many times that sometimes, a vehicle going to a disaster scene breaks down on the way before it reaches the destination. Sometimes a vehicle goes to a fire disaster scene but there is no water. Therefore, we are not ready for disasters.

Mr. Deputy Speaker, Sir, collapsed buildings in Nairobi City have become a daily occurrence. It is Nairobi City officials who approve plans to build houses which collapse every now and then. If disasters happen, are we ready to rescue people? You are aware that we have lost many people in disasters of collapsed buildings in the city. The only organisation we see rushing to scenes of disasters is the Kenya Red Cross Society (KRCS). Where is the county government? That is why I applaud the establishment of the County Disaster Management Authority (CDMA) because it does not exist.

Mr. Deputy Speaker, Sir, we have had unfortunate incidences of bombings in the city. I remember the first major one other than the minor ones which occurred at the OTC Bus Station many years ago was the American Embassy bombing. When a disaster occurs, that is the only time the Government forms an *ad hoc* team to work on that particular disaster and it is disbanded immediately thereafter. The same thing happened when terrorist attacked the Westgate Mall. It was citizens who went to save the situation. I am not belittling, by any means, the gallant policemen and soldiers who went to the rescue. However, a majority of the people who went there were people who had not been called upon to do so. They risked their lives to do a job that should have been done by other people.

Mr. Deputy Speaker, Sir, we have talked about floods and I will touch on them in a short while. However, the most important thing which we lack is sensitisation of the public on disasters. I hope – because I have noted the benefits of reading this Bill wholly – that the issue of sensitisation of members of the public on disasters will be included in this Bill. This morning, I was watching experts on disasters on the television. One thing that struck me which is correct, is that the experts said that in other countries, people run away when there is a bomb somewhere.

However, in Kenya, when there is a bomb somewhere, people run to it to watch not knowing that there could be another bomb or more danger. You have seen that police officers do a lot of work to remove people from danger points because they want to see what happens without knowing that it is dangerous because they have not been sensitised or educated on the dangers. They do not know what to do in case of a disaster.

Mr. Deputy Speaker, Sir, in other countries, there are lessons even from school. Children are educated on what to do. For example, they are told to run off, lie on the floor

or go to a specific place should something happen. However, in this country, we run to a place where a shooting is taking place to find out what has happened. We know that there should be assembly points. It is a requirement that people should assemble at a certain point, if, for example, there is a fire disaster. In our case here in Parliament, do we know where to assemble, if there is fire?

Mr. Deputy Speaker, Sir, the issue of disasters have been relegated to something that is not important yet it is very important that we sensitise ourselves on the dangers that may occur and what to do immediately after any disaster. That is what this Bill talks about; prompt response to any disaster. There must be prompt response. Sometimes, fires occur in this city and the fire engines arrive when *wananchi* have already put off the fire or when the fire has already consumed property. In other jurisdictions, a fire engine is accompanied by an ambulance of necessity but not of choice. A fire engine is always accompanied by a police car and an ambulance full of paramedics. However, we do not have such.

I hope that Sen. Haji will consider these specific requirements. There is no point for a fire engine to stop vehicles from running to put off a fire only to start looking for who will look after the victims, where the ambulance is and so on when they find people dying. These are very important aspects of disaster management.

Volunteer force is very important. We know that security forces and even the city employees cannot, by all means, meet the requirements of a disaster. Therefore, there is need for every county government to have a volunteer force. Let us learn from the example of the KRCS. I met Mr. Abbas Gullet, the Secretary-General of KRCS, and asked him how they manage because sometimes you hear of a disaster somewhere in West Pokot along the road and the RCSK officials are there in uniform. That happens anywhere in this Republic. We commend the Secretary-General of the KRCS for that. If the KRCS can do that, why not us or the Government?

I know that my time is running out but I want to talk about the values. I think Sen. (Prof.) Anyang'-Nyong'o talked about them. Values, enshrined in Article 10 of the Constitution must guide our performance. These are issues of integrity and that is why we talk about issues where people take advantage of disasters to enrich themselves. We saw people carrying bags and looting when the Westgate Mall attack occurred. That is against Article 10 of the Constitution. People take advantage of disaster to loot or budget more so that they can have something to eat. That must be followed.

I will talk about my final point because I can see a warning that my time is almost up. That is the establishment of the CDMA. It will be under the authority of the governor. The County Authority shall consist of the governor of the county who shall be the chairperson.

Mr. Deputy Speaker, Sir, in most cases, governors would tend to think that these are minor things and probably relegate them to others; maybe the director of planning or the deputy. Although, I have seen there is a provision for when he is not there, someone else sits in his place – if we are not careful, and Sen. Haji knows what happens to such bodies where people do not think much of them, they say; “okay, *bwana* DO1 *wewe ndio utakuwa na hii.*” We want the governor to be held personally responsible in chairing these disaster authorities and ensuring that he only leaves them under circumstances that must be explained.

I have been using Nairobi County as an example and I think they apply to all counties in the Republic so that governors do not think they are too big to chair disaster authorities which, perhaps, do not exist and only come to life when they hear that a disaster has happened then they come running and convene press conferences when, in fact, they ought to have done a lot to prevent some of these disasters.

Mr. Deputy Speaker, Sir, I thank Sen. Haji for this and hope that it will be enriched by certain amendments as we are proposing so that we have an Act that will send signals to all and sundry in this Republic that the country is ready and prepared for any disaster anytime.

The Deputy Speaker (Sen. Kembi-Gitura): Thank you, Sen. Musila.

Sen. Haji, do you want to reply?

(Sen. Haji spoke off record)

Please use the microphone.

Sen. Haji: Mr. Deputy Speaker, I am encouraged by my colleagues who have spoken. They have given valid suggestions which my Committee wishes to incorporate in future.

ADJOURNMENT OF DEBATE UNDER STANDING ORDER NO.99 (1)

THE COUNTY GOVERNMENTS DISASTER MANAGEMENT BILL (SENATE BILL NO. 40 OF 2014)

Sen. Haji: Mr. Deputy Speaker, Sir, Pursuant to Standing Order No. 99(1), I beg to move that the debate on the Bill be now adjourned for more Members to contribute.

We do not have quorum.

The Deputy Speaker (Sen. Kembi-Gitura): It is not about quorum, you either proceed under Standing Order No.99 or another one.

Sen. Haji: Mr. Deputy Speaker, I will proceed under Standing Order No.99.

The Deputy Speaker (Sen. Kembi-Gitura): I will not allow you to fish.

Sen. Haji: No, Mr. Deputy Speaker, Sir.

The Deputy Speaker (Sen. Kembi-Gitura): In that case, I have heard what Sen. Haji, the Mover of this Bill has said. I will proceed under Standing Order No. 99(1) and (2).

(Question proposed)

I do not think this needs to be seconded.

(Question put and agreed to)

Next order!

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, I will reorganize the Order Paper. We will postpone Order Nos.13 and 14 to another day to be determined by the Rules and Business Committee (RBC).

*Second Reading*THE PRESERVATION OF HUMAN DIGNITY AND ENFORCEMENT OF
ECONOMIC AND SOCIAL RIGHTS BILL (SENATE BILL NO. 8 OF 2015)*(Bill Deferred)***MOTION**NOTING OF THE REPORT OF THE IPU EXPERT MISSION TO KENYA ON THE
FRAMEWORK TO IMPLEMENT THE CONSTITUTIONAL PROVISION
OF THE TWO-THIRDS GENDER RULE

THAT, aware that the Parliament of Kenya is an active member of the Inter-Parliamentary Union (IPU) which is the international organization of national Parliaments; further aware that the IPU provides support to Parliaments in areas such as law and policy-making, as well as representation; noting with appreciation that, upon a request by the Speaker of the Senate, the IPU sent an expert delegation to Kenya from 12th to 16th July, 2015 to offer advice on the way forward in implementing the constitutional requirement on the two thirds gender rule; now therefor the Senate notes the report of the Inter-Parliamentary Union Expert Mission to Kenya on the framework to implement the constitutional provision of the two-thirds gender rule laid on the Table of the Senate on Thursday, 8th October, 2015 and extends its appreciation to the IPU for support on the matter.

*(Motion Deferred)***ADJOURNMENT**

The Deputy Speaker (Sen. Kembi-Gitura): Hon. Senators, as you note from the Order Paper, there is no other business for the day.

Hon. Senators, the Senate now stands adjourned until tomorrow, Thursday, 29th October, 2015 at 2.30 p.m.

The Senate rose at 6.00 p.m.